

¶1 Oscar Omar Melgar appeals his conviction and sentence for theft of a means of transportation. He asserts the trial court erred by denying his motion for a

judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. Finding no error, we affirm.

Factual and Procedural Background

¶2 On appeal, we view the facts in the light most favorable to sustaining Melgar's conviction and sentence. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In May 2007, police officers discovered a red jeep that had been reported stolen. The right rear passenger window of the jeep had been broken and the ignition had been damaged. In the driver's side door pouch, officers found a digital camera that did not belong to the jeep's owner, but contained images of Melgar. Officers also found a screwdriver on the floor of the jeep's driver's side. Melgar's fingerprints were found on the exterior of the rear right passenger door, and his deoxyribonucleic acid (DNA) was found on both the jeep's gear shift and a cigarette butt found in the jeep's dashboard ashtray. DNA analysis also showed Melgar could not be excluded as a major contributor to a mixed DNA profile found on the jeep's steering wheel, as well as a profile found on the screwdriver.

¶3 A grand jury charged Melgar with theft of a means of transportation and possession of burglary tools. Melgar stipulated at trial that the jeep's owner did not give him or anyone else permission to take or use her vehicle. On the second day of trial, the trial court denied Melgar's motion for a judgment of acquittal made pursuant to Rule 20, Ariz. R. Crim. P. The jury found him guilty of both counts. The court sentenced Melgar

to enhanced concurrent, presumptive prison terms of 11.25 years for theft of a means of transportation and 1.75 years for possession of burglary tools. This appeal followed.

Discussion

¶4 Melgar argues on appeal that the trial court erred in denying his Rule 20 motion for a judgment of acquittal on the charge of theft of a means of transportation.¹ We will not disturb a trial court's denial of a Rule 20 motion absent an abuse of its discretion. *State v. Leyvas*, 221 Ariz. 181, ¶ 33, 211 P.3d 1165, 1175 (App. 2009). A trial court has discretion to grant a judgment of acquittal pursuant to Rule 20 only when no substantial evidence could support a conviction. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993). Substantial evidence is defined as proof that a reasonable jury could accept as sufficient to support a conclusion that a defendant is guilty beyond a reasonable doubt. *Id.* "In determining the sufficiency of the evidence to withstand a Rule 20 motion, we view the evidence in a light most favorable to sustaining the verdict." *State v. McCurdy*, 216 Ariz. 567, ¶ 14, 169 P.3d 931, 937 (App. 2007). "If reasonable persons could differ as to whether the evidence establishes a fact in issue, then the evidence is substantial." *Id.*

¶5 The state charged Melgar with theft of a means of transportation under A.R.S. § 13-1814(A)(5), which provides that a person commits the offense if he or she "[c]ontrols another person's means of transportation knowing or having reason to know that the property is stolen." "Control," as defined by A.R.S. § 13-1801(A)(2), "means to

¹Melgar does not appeal his conviction for possession of burglary tools.

act so as to exclude others from using their property except on the defendant's own terms." Melgar stipulated he did not have the owner's permission to use the jeep, and concedes the evidence demonstrates he had been inside it. Additionally, because the jeep's ignition had been damaged, the jury reasonably could have concluded it had been stolen. Melgar does not argue otherwise, asserting only there was insufficient evidence he had controlled the jeep, reasoning the evidence was "equally consistent" with his having been "merely a passenger in the vehicle."

¶6 Although the evidence is consistent with Melgar having been a passenger in the jeep, a criminal conviction nonetheless may be based solely on circumstantial evidence and "it is unnecessary for the prosecution to negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence." *State v. Nash*, 143 Ariz. 392, 404, 694 P.2d 222, 234 (1985). "Evidence [that is] wholly circumstantial can support differing, yet reasonable inferences sufficient to defeat a motion for directed verdict," and "the probative value of the evidence is not reduced simply because it is circumstantial." *State v. Anaya*, 165 Ariz. 535, 543, 799 P.2d 876, 884 (App. 1990).

¶7 Melgar ignores evidence that his DNA was found on the jeep's gear shift. The state's DNA analyst testified she "would not expect a casual touch [of the gearshift] to leave DNA behind." And Melgar could not be excluded as a major contributor to DNA found on the jeep's steering wheel. These facts would permit the jury to infer

Melgar had driven, and therefore controlled, the jeep.² Moreover, the jury could conclude he had left his property—the digital camera—in the jeep’s driver’s side door pouch, further suggesting he had controlled the jeep. Thus, the trial court did not abuse its discretion in denying Melgar’s Rule 20 motion.

Disposition

¶8 We affirm Melgar’s conviction and sentence for theft of a means of transportation.

J. WILLIAM BRAMMER, JR, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge

²We do not suggest the state was required to prove Melgar had driven the jeep in order to establish that he had controlled it, only that driving it without permission would constitute control under § 13-1801(A)(2).